

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
LETTERS PATENT APPEAL NO.173 OF 2006
IN
WRIT PETITION NO.4042 OF 2006

Rajesh Shashikant Kocharekar .. Appellant

Vs.

Shyam Dnyaneshwar Shinde
& Anr. .. Respondents

Mr.Machhindra Patil for the appellant

Mr.P.M.Havnur for respondent no.1

**CORAM : J.N.PATEL &
A.A.SAYED, JJ.**

DATED : 16TH APRIL, 2007

P.C.:

1. Heard.

2. The appellant is the tenant against whom the respondent no.1 filed a suit in the Court of Small Causes at Bombay which came to be registered as Civil Suit No. 613/1119 of 2004 for seeking a decree of eviction, arrears of rent and inquiry under Order XX Rule 12 of the Code of Civil

Procedure.

3. One of the grounds for seeking eviction is that the respondent no.2 i.e. original defendant no.2 is a subtenant to whom the appellant tenant has sub let the premises which is Gala No. 1, Universal Industrial Estate, Plot No.194/B, Next to Municipal Marathi School, Kala Killa, Dharavi (E), Mumbai 400 017.

4. It so happened that inspite of being served with summons, both the defendants i.e. appellant and respondent no.2 failed to file a written statement within the stipulated period of 90 days. The appellant tenant then took out a notice of motion seeking leave of the court to file written statement by condoning delay of 65 days on the ground of ill health and weak financial position. Respondent no.2 failed to appear in the matter. The said application came to be rejected by the trial court vide its order dated 12.09.05. Therefore, the appellant preferred a revision before the bench of Small Causes Court at Mumbai which came to be registered as Revision Application

No. 266 of 2006. The same came to be dismissed which has been challenged by the appellant tenant before the learned single Judge of this court by filing a Writ Petition being Writ Petition No.4042 of 2006 and by order dated 3.7.06, the said writ petition was dismissed in limine. It is against this order that this Letters Patent Appeal is preferred. For the purpose of admission of Letters Patent Appeal, in our view, it is not necessary to await service of respondent no.2 who is the alleged sub tenant of the tenant as he did not appear in response to the summons issued by the Small Causes Court.

5. The learned counsel for the appellant tenant submits that the court ought to have taken into consideration that as the appellant tenant was unable to approach his advocate due to his weak financial position and ill health, delay of 65 days ought to have been condoned as an exceptional case.

6. The learned trial court, revisional court as well as the learned single Judge of this court examined the issue and have given concurrent

finding of fact that the reason given by the appellant tenant for seeking condonation of delay cannot be considered to be an exceptional case. The revisional court rather has considered all the aspects of the matter and have taken into account the medical certificate issued by one Dr.Sanjay Sonawane and found that there is no justification for the period 14.10.04 to 09.11.04 even if what has been canvassed by the appellant is accepted that he was suffering from jaundice for the period 10.11.04 to 31.01.05. We therefore, find that the learned single Judge has not committed any error or illegality in dismissing the petition. As such the Letters Patent Appeal is dismissed. In view of the fact that L.P.A. is dismissed, Civil Application does not survive. The same is also dismissed as infructuous.

(SHRI J.N. PATEL, J)

(SHRI A.A. SAYED, J)